

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 101 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MOJANBHAI YASHINBHAI PATHAN

Versus

STATE OF GUJARAT

Appearance:

MR PR NANAVALI for Petitioner
MS KATHA GAJJAR ADDL.PUBLIC PROSECUTOR
for Respondent No. 1- State of Gujarat

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 05/05/99

ORAL JUDGEMENT

1. The petitioner was placed on trial for the offences punishable under Secs. 279-337-304A of the Indian Penal Code and Sec.177-184-134B of the Motor Vehicles Act in the court of the Metropolitan Magistrate (Court No.12), Ahmedabad. He came to be convicted of all the offences; and sentenced to four months Rigorous Imprisonment and a fine of Rs.100/-, i/d seven days

Rigorous imprisonment more qua the offence under Sec. 279 of the Indian Penal Code, while two years Rigorous Imprisonment and fine of Rs.1,000/-, i/d three months Rigorous Imprisonment more qua the offence punishable under Sec.304A of the Indian Penal Code. No separate sentence is passed with regard to the offences under Secs. 177-194-134B of the Motor Vehicles Act. In appeal, the learned Additional City Sessions Judge, Ahmedabad confirmed the order of conviction and sentence passed by the learned Metropolitan Magistrate. By this revision, the petitioner calls in question the legality and validity of the judgments and orders of conviction and sentence rendered by both the courts below.

2. Necessary facts may in brief be stated. There is a vegetable market in Jamalpur area in the city of Ahmedabad. On 9th October, 1995 in the morning at 9-00 a.m. Ramiben Valjibhai Vaghari had been to the vegetable market to purchase the vegetables. Few vehicles inclusive of matador were there on the road in the market. The petitioner had gone there taking his matador. He was taking his matador back. At that time, Ramiben was passing through the narrow gap available between two vehicles. On one side there was a stationery truck and from otherside, the matador was being taken back by the petitioner. Ramiben was, therefore, trapped between the two vehicles, and sustained the crushing injuries. She was taken to the hospital for treatment. She died during the course of treatment. A complaint against the petitioner was then lodged with Gaekwad Haveli Police Station for the above stated offences stating that the petitioner drove his matador rashly and negligently and endangering human life, as a result, Ramiben sustained the injuries and succumbed to the injuries. The Investigating Officer filed the chargesheet against the petitioner in the Court of the learned Metropolitan Magistrate, Ahmedabad. The petitioner pleaded not guilty when the charge was framed. Appreciating the evidence led by the prosecution, the learned Magistrate found that the prosecution had proved the charge levelled against the petitioner beyond reasonable doubt. He, therefore, convicted and sentenced the petitioner as aforesaid. Being aggrieved by such judgment and order convicting and sentencing him, the petitioner preferred Criminal Appeal No.77 of 1998 in the City Sessions Court at Ahmedabad which was assigned to the learned Additional City Sessions Judge, Ahmedabad who dismissed the appeal. It is against that order, the present revision is filed.

3. It may be stated that the petitioner does not

before me calls in question his conviction. He challenges the sentence submitting that the same is harsh. When the revision is confined to the quantum of sentence, I will deal with the only point raised for consideration and would not dwell upon other points on merits. It is the submission of Mr. Nanavati, the learned advocate for the petitioner that in this case, probation may be given. The motor accidents are now-a-days going berserk and roads are being rendered grave-yards. Every day some of the persons lose their lives. The drivers are unflinchingly go on driving negligently endangering human life. It would not be, therefore, just and proper in this case to grant probation. In the alternative, therefore, it is the submission of Mr. Nanavati that taking the lenient view, the sentence inflicted may be reduced because the petitioner, for this mishap, cannot solely be blamed, as the victim was also at fault. The contention requires consideration looking to the special feature of the case appearing on record. On one side, a truck was parked and on the otherside, the petitioner was taking his matador back to the direction where the truck was parked. In between two vehicles, there was a narrow space. Ramiben as, appears from the facts on record in haste tried to pass through thinking that she would be able to successfully pass through, but her judgment did not come true, and she was trapped between the two vehicles, with the result, she sustained crushing injuries and succumbed to the injuries later on in the hospital. It was, it seems, risky to pass through but Ramiben when preferred to pass through taking the risk, the petitioner's submission in view of this peculiar fact requires consideration.

4. What should be the reasonable and just sentence in such facts of the case is the point that arises for consideration. It is submitted that the petitioner is having a family. There are about nine members in his family. For the last three months, he is in jail. Considering his such circumstances and the above mentioned circumstance, namely Ramiben the victim suddenly deciding to pass through the narrow gap available which was beyond the imagination of a driver, the sentence of imprisonment inflicted is required to be reduced to six months relating to the offence punishable under Sec. 304 of Indian Penal Code. When the petitioner is being convicted of the offence punishable under Sec.304A of Indian Penal Code, it would not be necessary to sentence him separately relating to the offence punishable under Sec. 279 of Indian Penal Code. When imprisonment is being reduced, the fine must be

enhanced.

5. In the result, the revision is partly allowed.

The conviction qua aforesaid offences recorded by the learned Metropolitan Magistrate, Ahmedabad in Criminal Case No.7 of 1996 and confirmed by the City Sessions Court, Ahmedabad in Criminal Appeal No.77 of 1998 is maintained; but the sentence of imprisonment and fine inflicted qua the offence punishable under Sec.279 I.P.Code is set aside and quashed as the same can be said to have been included in the sentence relating to the offence under Sec. 304A I.P.Code. The sentence of imprisonment inflicted qua the offence punishable under Sec.304A of the Indian Penal Code is reduced from two years to six months, but fine of Rs.1,000/- is enhanced to Rs.5,000/-. Rest of the order is maintained. Rule is made absolute to the aforesaid extent.

Date: 05/05/1999. -----

(ccshah)